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Convention on the Rights of the Child

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Committee on the Rights of the Child

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 10/2017*, **

Submitted by:	S.C.S.
Alleged victims:	B.S.S., C.A.S. and C.M.S.
State party:	France
Date of complaint:	5 January 2017
Date of decision:	25 January 2018
Subject matter:	Eviction of a family with children from a Roma camp
Procedural issue:	Incompatibility *ratione temporis*
Substantive issues:	Best interests of the child; right to housing; right to health; right to education; cruel, inhuman or degrading treatment; discrimination on the basis of ethnic origin
Articles of the Convention:	2, 3, 4, 27 (3), 28, 37 (a)
Article of the Optional Protocol:	7 (g)

1.1 The author of the communication is S.C.S., a Romanian national of Roma ethnicity, born in 1972. She is submitting the communication on behalf of her two children, B.S.S., born on 22 March 2005, and C.A.S., born on 12 November 2009, and her grandson, C.M.S., born on 14 June 2011. She claims that B.S.S., C.A.S. and C.M.S. are victims of a violation of articles 3, 4, 24, 27 (3), 28 and 37 (a) and of article 2, read in conjunction with articles 3, 4, 24, 27 (3), 28 and 37 (a), of the Convention. The author is represented by counsel. The Optional Protocol entered into force for the State party on 7 April 2016.

1.2 On 16 June 2017, the Committee, acting through its working group on communications, decided to consider the admissibility of the communication separately from the merits of the case.

* Adopted by the Committee at its seventy-seventh session (15 January–2 February 2018).

** The following Committee members participated in the consideration of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Jorge Cardona Llorens, Bernard Gastaud, Olga A. Khazova, Hatem Kotrane, Gehad Madi, Benyam Dawit Mezmur, Clarence Nelson, Mikiko Otani, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Kirsten Sandberg, Ann Marie Skelton, Velina Todorova and Renate Winter.

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The facts as submitted by the author

2.1 The author and her family, who are all members of the Roma community, moved from Romania to France on an unspecified date. After being evicted, on 31 March 2015, from the encampment where they were living, they moved into another encampment occupied by other Roma families in Champs-sur-Marne on land belonging to the public development authority of Marne-la-Vallée.

2.2 By an order dated 10 April 2015, the mayor of Champs-sur-Marne notified the residents of the encampment that they had to leave the site within 48 hours; otherwise, they would be forcibly evicted. The author filed an urgent application for the protection of a fundamental freedom (*référé liberté*)[1] with the Melun Administrative Court, requesting the suspension of the mayor's order and the assignment of a lawyer.

2.3 In a ruling dated 16 April 2015, the Court dismissed the author's application on the grounds that the mayor's order was not "vitiated by a blatant disregard for the principles of necessity and proportionality" given the safety hazards identified in the camp.[2] The Court held, furthermore, that it did not fall to the urgent applications judge to appoint a lawyer in these proceedings. The same day, the author and her family, together with other residents of Champs-sur-Marne, were evicted from the camp. The author alleges that, although homeless persons are entitled to emergency accommodation, they were told that no such accommodation could be provided for them. The author and her family, together with the other evicted residents, waited on the roadside for hours without knowing what was to become of them.

2.4 The author then lodged an appeal with the Council of State. In a decision dated 7 January 2016, the Council of State dismissed the author's appeal but nevertheless overturned the ruling of the Melun Administrative Court for procedural reasons.[3]

2.5 On 7 July 2016, the author submitted a complaint to the European Court of Human Rights, which remains pending. In that complaint, the author claimed to have been the victim of stigmatization and harassment on the basis of her ethnicity and violations of her right to respect for her private and family life and her home and her right to an effective remedy.

2.6 The author alleges that their eviction from the encampment in Champs-sur-Marne has had a negative impact on the education of B.S.S., C.A.S. and C.M.S. For example, B.S.S., who was 10 years old when they were evicted, had been enrolled at a State school which she was able to attend thanks to a volunteer who drove Roma children to school in his private car. Since the winter of 2015, however, she has been unable to attend the school because the volunteer could no longer drive the children to school for personal reasons. The author also notes that the family is now living in a hut made from flammable materials, without a drinking water connection, electricity or a toilet. They were evicted again from other encampments on 3 August 2016 and in September and November 2016.

2.7 The author claims that these events reflect a government practice of forcibly evicting Roma that has resulted in thousands of evictions each year.[4]

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[1] The author invoked article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (right to respect for private and family life) and article 3 of the Convention on the Rights of the Child (best interests of the child), as well as their rights to freedom of movement and inviolability of the home.

[2] These hazards included "electrical connections with bare power cables, campfires and shacks made from flimsy, inflammable materials".

[3] The Council of State ruled that the urgent applications judge had in fact had the authority to appoint a lawyer in the proceedings.

[4] The author refers to the Amnesty International report entitled *Told to Move On: Forced Evictions of Roma in France* (October 2013), the Romeurope report entitled *Harassment and Stigmatisation: Policies and Public Statements Are Helping to Make the Conditions of Those Living in Slums Worse* (2014) and the annual reports of the European Roma Rights Centre and the Ligue des droits de l'homme (Human Rights League) on evictions of Roma in France.

Complaint

3.1 The author alleges that the State party violated the rights of B.S.S., C.A.S. and C.M.S. under article 3 of the Convention because the best interests of the child were not a primary consideration in either the order of the mayor of Champs-sur-Marne or the judicial decisions adopted after the family's eviction from the camp. She claims that the mayor knew there were children in the camp but proceeded with the eviction anyway without arranging for alternative housing.

3.2 The author claims that the State party violated article 4 of the Convention because, according to an administrative memorandum dated 26 August 2012 on protecting the rights of residents of shanty towns, social measures should have been taken. In this case, there was a failure to comply with this memorandum, particularly its provisions on housing and education.

3.3 The author claims that the rights of B.S.S., C.A.S. and C.M.S. under articles 24 and 27 (3) of the Convention were violated because the national authorities left them without any accommodation and did not take measures to avoid endangering the children's health or to help the author secure a standard of living adequate for their development.

3.4 The author claims that the State party violated the right to education of B.S.S., C.A.S. and C.M.S. under article 28 of the Convention. Specifically, the State party did not take measures to ensure that B.S.S. could continue her education or to ensure access to education for C.A.S. and C.M.S.

3.5 The author claims that the family's eviction from the encampment in Champs-sur-Marne constituted inhuman and degrading treatment of B.S.S., C.A.S. and C.M.S. within the meaning of article 37 (a) of the Convention. The children had to watch as their home was destroyed while their mother remained utterly powerless to do anything about it.[5]

3.6 Lastly, the author claims that the State party violated article 2, read in conjunction with articles 3, 4, 24, 27 (3), 28 and 37 (a) of the Convention, because the eviction occurred within the broader context of a discriminatory policy directed against persons of Roma origin in France.

State party's observations on admissibility

4.1 In its observations submitted on 18 April 2017, the State party noted that the Optional Protocol entered into force for France on 7 April 2016. The author's complaint, however, concerns an eviction from the Champs-sur-Marne camp which took place on 16 April 2015 pursuant to the mayor's decision of 10 April 2015. Although she mentions that she has been evicted on other occasions, including in March 2015 and September and November 2016, the events that are the subject of the present communication and that had prompted her beforehand to apply to the Melun Administrative Court and then to the Council of State for a domestic remedy relate to the eviction that took place in April 2015. They therefore occurred prior to the entry into force of the Optional Protocol for France.

4.2 The State party considers, moreover, that all available domestic remedies have not been exhausted because the urgent application filed with the Melun Administrative Court and the appeal lodged with the Council of State were made in the name of and on behalf of the author alone, without any specific reference to the situation of B.S.S., C.A.S. and C.M.S. In her urgent application to the Melun Administrative Court, the author mentioned only the best interests of the child and did so only once, without entering into further detail or making an argument that specifically concerned B.S.S., C.A.S. and C.M.S. In her statement

[5] The author invokes the decisions of the European Court of Human Rights in the cases *Muskhadzhiyeva and others v. Belgium*, No. 41442/07, 19 January 2010, and *Popov v. France*, Nos. 39472/07 and 39474/07, 19 January 2012, to justify the claim that the fact of seeing their parents powerless and in distress while in detention may constitute ill-treatment for the children. She also invokes the cases *D.H. and others v. Czech Republic* [GC], No. 57325/00, ECHR 2007-IV, and *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, ECHR 2011, to justify the claim that the State party could be held responsible under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms for leaving vulnerable persons homeless.

of grounds of appeal to the Council of State, the author referred broadly to the children's schooling and the best interests of the child. However, those references were very general and did not directly or specifically concern B.S.S., C.A.S. and C.M.S. Furthermore, the articles that are alleged to have been violated in the present communication were not invoked in the author's submissions to the domestic courts except in connection with the best interests of the child.[6]

4.3 Lastly, the State party points out that an application concerning the same facts and events as the present communication is currently pending before the European Court of Human Rights. The Committee and the Court would therefore be examining the "same matter" within the meaning of article 7 (d) of the Optional Protocol.

Author's comments on the State party's observations

5.1 In her comments submitted on 23 May 2017, the author informed the Committee that the family is still living in a shanty town in the municipality of Champs-sur-Marne, that B.S.S. has stopped going to school and that C.A.S. and C.M.S., who are of compulsory school age in France, were not admitted to the State schools to which the author applied. They receive no government assistance, only support from NGOs.

5.2 The author claims that, although the eviction occurred on 16 April 2015, its impact, especially the lack of an education for B.S.S., C.A.S. and C.M.S., has continued to be felt beyond that date and up to the present day.[7]

5.3 The author claims that she has exhausted all available domestic remedies. She states that she invoked the best interests of the child in her urgent application even though she was not represented by counsel in those proceedings. As for mentioning the right to education in her statement of grounds of appeal to the Council of State, the author claims that she explicitly referred to the rights of her children. She adds that ethnic discrimination was implicit in her argument in the sense that, as Roma, she and her children belong to a vulnerable minority group and therefore needed special protection.

5.4 The author states that the application pending before the European Court of Human Rights concerns different violations, such as interference in private and family life and the lack of an effective remedy. It therefore does not concern the same substantive rights as the present communication.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

6.2 The Committee notes the author's allegations that, on 16 April 2015, her family, including B.S.S., C.A.S. and C.M.S., were evicted from the camp where they were living pursuant to a municipal order dated 10 April 2015 and that the author's applications to suspend the execution of this order were dismissed on 16 April 2015 by the Melun Administrative Court and on 16 January 2016, on appeal, by the Council of State. The

[6] The State party invokes the decisions of the Human Rights Committee in the cases *Stephens v. Jamaica* (CCPR/C/55/D/373/1989), of 18 October 1995, and *Singh v. France* (CCPR/C/106/D/1852/2008), of 1 November 2012, among others, which establish the following: it is not necessary for an individual who claims to be a victim of a violation of any of the rights set forth in the International Covenant on Civil and Political Rights to invoke the articles of the Covenant explicitly; however, the substance of the complaint must be stated during domestic proceedings, so as to give national courts the opportunity to remedy the alleged violation first.

[7] The author invokes the judgment of the European Court of Human Rights in the case *Moldovan and others v. Romania (No. 2)*, Nos. 41138/98 and 64320/01, ECHR 2005-VII, and the Views of the Committee on the Rights of Persons with Disabilities in the case *Noble v. Australia* (CRPD/C/16/D/7/2012).

Committee further notes that all the facts mentioned in the present communication, including the ruling of the Council of State at final instance, occurred prior to 7 April 2016, the date of entry into force of the Optional Protocol for the State party.[8]

6.3 Consequently, the Committee declares this complaint inadmissible *ratione temporis* under article 7 (g) of the Optional Protocol.

7. The Committee on the Rights of the Child decides:

(a) That the communication is inadmissible under article 7 (g) of the Optional Protocol;

(b) That this decision shall be transmitted to the author of the communication and, for information, to the State party.

[8] See the decision of the Committee on the Rights of the Child in the case *A.H.A. v. Spain* (CRC/C/69/D/1/2014), of 4 June 2015, para. 4.2.